

POLICY IMPLICATIONS of DEFINING MEAN HIGH TIDE

Origin of mean high tide: English common law (1800s)

Purpose: using local law, custom, and practice to establish the boundary between public and private property (the ordinary high water mark)

Problems with its application:

- there is no mention of mean, average, elevation, or line, but the *limit* (i.e., mark) reached by the ordinary (not extraordinary) tides
- the "line" is an indistinguishable location on the beach; better defined as the theoretical intersection of the elevation of MHT and the beach

Reality: each state has the authority to define the boundary of the lands held in public trust as outlined by common law; this leads to inconsistency of judicial decisions

Origin of the Misapplication of Common Law:

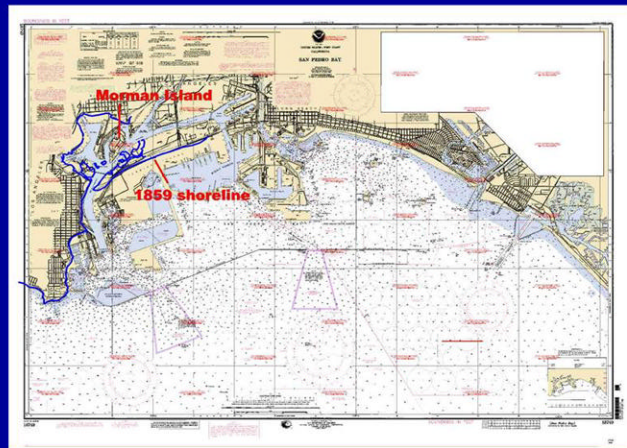
Borax Consolidated v. City of Los Angeles, 296 U.S. 10 (1935)

Facts: City of LA brought suit to determine title of tideland of Mormon Island, situated in the inner bay of San Pedro (now known as Los Angeles Harbor)

Issue: determination of the boundary between the upland and the tideland

Federal rule: *Borax* applied the 18.6 year lunar (Metonic) cycle to determine the MHTL* (where a plane of a certain elevation, determined by the mean height of the tides over an 18.6 year cycle, intersects the contours of a particular beach).

*MHTL as given by the US Coast and Geodetic Survey



Source: <http://historicals.nod.noaa.gov/historicals/histmap.asp>

Rhode Island state law: *State v. Ibbison*, 448 A.2d 728 (1982)

Facts: citizens were conducting a beach clean-up in Westerly. Property owner alleged trespass, believing his rights extended to the MHWL. Defendants believed that their rights to traverse the shore extended to the HWM.

Issue: Court was faced with defining how the high water line was to be calculated

Rule: "The mean high tide is the arithmetic average of high-water heights observed over an 18.6-year Metonic cycle. It is the line that is formed by the intersection of the tidal plane of mean high tide with the shore." *Id.* at 730. (adopting holding of *Borax*).

Problems with the adoption of *Borax* by the Rhode Island Judiciary:

- Tidal activity on an island in an estuary is significantly different compared to an ocean beach; and
- Attempt to apply a **statistical average** (Metonic cycle) to such a dynamic setting (such as a coastal beach and shoreline)

A better way to define public trust lands in Rhode Island:

- 1) Adhere to common law
- 2) Better understanding of scientific and meteorological terms
- 3) Convince the RI Supreme Court regarding the best application of *Ibbison*, rather than modifying or changing *Ibbison*
- 4) Presentation of the factual dynamics to the Court in a manner that can be understood